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6
 7 UNITED STATES DISTRICT COURT
 8 FOR THE CENTRAL DISTRICT OF CALIFORNIA

9
 10 UNITED STATES OF AMERICA,) No. 06 CR 00044-DDP
)
 11 Plaintiff,) DEFENDANT MARK ALAN
) ABRAMS' SUPPLEMENTAL
 12 vs.) SENTENCING MEMORANDA
)
 13 MARK ALAN ABRAMS,)
) August 23, 2010
 14 Defendant.)
)
 15 _____)

16
 17 NOTICE IS HEREBY GIVEN that on August 23, 2010 at 1:30 p.m., or as soon
 18 thereafter as the matter may be heard, before Honorable Dean D. Pregerson, of the
 19 above entitled court, defendant, Mark Alan Abrams, requests the Court consider his
 20 position re: sentencing and impose a sentence not greater than fifty seven months. Said
 21 request is based on the previously filed defense sentencing memoranda, the attached
 22 supportive statements and reports, the United States Attorney's 5K1.1 recommendation,
 23 including the detailed description of Abrams' cooperation, including the transcripts of
 24 Abrams testimony before this Court.

25 As noted in the government's sentencing memorandum, after being charged, Mr.
 26 Abrams provided substantial cooperation to the United States Attorney in the prosecution
 27 of the co-defendants and eventually testified at the trial of Joseph Babajian, Kyle Grasso
 28 and Lila Rizek before this District Court. There were additional co-defendants

1 prosecuted and convicted through guilty pleas, including Nicole LaViolette, Jamieson
2 Matykowski, Timothy Holland, Richard Maize, Scott Robinson, Bill Thomas and
3 Charles Fitzgerald. Abrams cooperated for well over six years in the prosecution of
4 himself and the other participants in the fraud. As noted, his cooperation included many
5 extensive debriefing sessions, authentication and explanation of key documents and
6 testimony during the trial of two real estate agents and an appraiser. The United States
7 Attorney has characterized Abrams testimony was instrumental in securing two
8 convictions and two additional guilty pleas.

9 The United States Attorney has recommended a seven level departure pursuant to
10 U.S.S.G. 5K1. This recommended departure results in a total advisory guideline offense
11 level of 28, with a corresponding sentencing range of 78-97 months. The government
12 recommends an 84 month sentence.

13 Given Abrams substantial cooperation, including his trial testimony, and his
14 related cooperation in a state investigation and prosecution for fund raising corruption,
15 the defendant respectfully requests a ten level downward adjustment for a adjusted
16 offense level of 25 and a corresponding sentencing range of 57-71 months. Abrams seeks
17 a sentence not to exceed 57 months. In reaching an adjusted offense level of 25 Abrams
18 seeks downward departures based his cooperation, in the instant case and a state
19 investigation targeting political fund raising corruption. U.S.S.G 5K1.1.

20 The nature and circumstances of Abrams' offense conduct and his history and
21 characteristics justify a 57 month sentence. 18 U.S.C. 3553 (a)(1). Clearly Abrams'
22 offense conduct is egregious. He was an experienced developer and mortgage broker,
23 who took advantage of his knowledge and experience to effectuate the fraud. Since his
24 arrest, Abrams has fully cooperated with the government and his vast experience and
25 knowledge resulted in the convictions and or guilty pleas of his co-defendants.
26 Moreover, as seen by the numerous statements of those who know and continue to work
27 with Abrams, he has been forthright and open regards his offense conduct. The resultant
28 personal shame and depression in effect being an additional form of punishment endured
over the past seven years.

1 A 57 month sentence surely reflects the seriousness of Abrams' crimes, promotes
2 respect for the law, and provides just punishment for the offenses. 18 U.S.C. 3553
3 (a)(2)(A). A sentence of nearly five years incarceration represents a severe and stark
4 contrast for a man who has tasted the fruits of the highest levels of our society.
5 Institutional confinement of any length would be punishment for Abrams. A sentence of
6 nearly five years reflects the seriousness of his offense conduct *and* recognizes his
7 cooperation and assistance. Further, a 57 month sentence would afford adequate
8 deterrence to criminal conduct. 18 U.S.C. 3553 (a)(2)(B-C). It would seriously impact
9 Abrams and deter him from any future offense conduct and provide the public notice,
10 that even a fully cooperative offender will suffer substantial confinement.

11 Finally, a 57 month sentence avoids any unwarranted sentence disparities. 18
12 U.S.C. 3553 (a)(6). The government notes that Fitzgerald, who was sentenced to 168
13 months and Abrams should be viewed similarly. Regarding offense conduct, this
14 position appears reasonable. However, it is noted that unlike Fitzgerald, Abrams did not
15 flee and in the end, provided substantial and meaningful cooperation.

16 17 SUPPORTIVE STATEMENTS

18 Abrams submits under separate cover, an assortment of reports and or letters from
19 family, friends and business associates as further evidence of his position in the
20 community and in support of his requested sentence. In addition, Abrams submits, under
21 separate cover, a statement from his mental health provider, which notes the emotional
22 and mental health impact his arrest and prosecution has had on him. All the
23 aforementioned statements are submitted in support of a sentence not to exceed 57
24 months.

25 26 UNUSUAL FAMILY CIRCUMSTANCES

27 The Sentencing Commission has stated that:

28 Family ties and responsibilities and community ties are not ordinarily
relevant in determining whether a sentence should be outside the

1 applicable guideline range.

2 U.S.S.G. Section 5H1.6.

3 There may be circumstances where family ties and responsibilities are not only
4 relevant to the sentencing decision, but may also constitute either a supporting factor for
5 an aberrance departure, or a separate and distinct basis on which to grant a downward
6 departure. *United States v. Adler*, 52 F. 3d 20 (2d Cir. 1995)(family ties treated as
7 separate basis for departure); *United States v. Pena*, 930 F. 3d 1486, 1495 (10th Cir.
8 1991) (family ties relevant to aberrance analysis, citing Dickey, supra). Additionally,
9 other Circuits have allowed departures based solely on extraordinary family
10 responsibilities. In *United States v. Haversat*, 22 F.3d 796, 797 (8th Cir. 1997)
11 (defendant was needed to provide care for his wife who suffered from severe psychiatric
12 problems). Accord, *United States v. Gaskill*, 991 F.2d 82, 84-86 (3rd Cir. 1993).

13 Importantly, Courts have recognized that extraordinary circumstances include
14 situations where the defendant is the caretaker for a dependant who suffers for mental or
15 physical problems, See, *United States v. Gaskill*, 991 F.2d at 84-85, or where the
16 defendant has an unusual degree of family responsibility. *United States v. Rivera*, 994
17 F.2d 942, 952-53 (1st Cir. 1993).

18 Perhaps the most instructive case arises from a Second Circuit decision: *United*
19 *States v. Galante*, 111 F.3d 1029 (2nd Cir. 1997) (departure for extraordinary family ties
20 and responsibilities from level 23, range 46-57 months, to a sentence of 24 months home
21 detention and 225 community service plus five years supervised release not an abuse of
22 court's discretion). The *Galante* court acknowledged that:

23 the families of defendants are the intended beneficiaries of
24 downward departures on the ground of extraordinary family
25 circumstances relating to family responsibilities, the
26 sentencing court thought that if defendant were imprisoned the
27 family unit would probably be destroyed, and defendant's wife
28 and children relegated to public assistance, which, it
explained, was a matter worth considering, but not by itself a

1 ground for departure. The district judge stated that ‘removal
2 of the father from this unit at this particular point in time
3 would have a disastrous effect on the children in terms of
4 possibilities of their education and upbringing.’ That is, it
5 would terminate present family responsibilities which Galante
6 has effectively shouldered and continues to discharge.

7 *United States v. Galante*, 111 F.3d at 1035.

8 A downward departure on the grounds of extraordinary family circumstances
9 should be granted for the following reasons:

10 This is a unique case that can destroy the Abrams family within the meaning of the
11 Second Circuit’s circumstances in *Galante*.

12 As stated in the PSR and noted in the assorted supportive reports and letters,
13 Abrams is the sole means of support for his family. Further, he is the central figure in the
14 emotional and financial support of his son, Henry, who has autism. Even more
15 importantly, he has made every attempt to provide the love and affection so vital for the
16 healthy development of his children. Substantial incarceration will inflict serious
17 hardship on his family who rely heavily on him for financial support.

18 The disastrous effect on the Abrams family-related circumstances weigh strongly
19 in favor of a sentence not in excess of 57 months.

20
21 A COMBINATION OF THE ABOVE FACTORS MERITS A DOWNWARD
22 DEPARTURE

23 A downward departure, which otherwise results in a reduced sentence, may be
24 based upon individual factors or a set or combination of factors. *United States v. Lam*,
25 20 F.3d 999, 1005 (9th Cir. 1994) (family ties are a “particularly proper basis for
26 departure where aberrant conduct is also an issue.); *United States v. Fairless*, 975 F.2d
27 664, 668 (9th Cir. 1991) (a single act of aberrant behavior may result from a convergence
28 of factors); *United States v. Cook*, 938 F.2d 149, 153 (9th Cir. 1991). The court in *Cook*
stated in dictum “The statute speaks in the singular of mitigating circumstances,”

(citations omitted) There is no reason to be so literal-minded as to hold that a combination of factors cannot constitute a “mitigating circumstance”. . .given the commission’s acknowledgment of the “vast range of human conduct” not encompassed by the guidelines, a unique combination of factors may constitute the “circumstances that mitigate”. *Cook* at 153. See also, *United States v. Pena*, 930 F.2d 1486, 1495-96 (10th Cir. 1991) (a combination of family responsibilities, aberrant behavior and employment history supported a downward departure in a marijuana distribution case.) Indeed, in *Koon*, the Supreme Court discussed the combination of several factors to uphold the downward departure granted by the district court. The court approved a departure downward on the fact that the defendants in *Koon* had been successively prosecuted in both the state and federal systems and would be more susceptible to prison abuse than other inmates

Thus, a combination of factors may indeed represent the strongest grounds for a downward departure, when the individual factors may fail to support it.

In this case, the combination of factors, [1] cooperation, [2] family circumstances, [3] lack of substantial criminal contacts and history; presents a case for a 10 level downward departure and the imposition of a sentence not to exceed 57 months.

CONCLUSION

Mr. Abrams requests the court consider the aforementioned and impose a sentence not greater than 57 months.

Dated: August 16, 2010

/s/Michael R. Belter

Michael R. Belter, Esq.
Attorney for Mark Alan Abrams